



FH
[REDACTED]

STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of

[REDACTED]
[REDACTED]
[REDACTED]

DECISION

FOP/164042

PRELIMINARY RECITALS

Pursuant to a petition filed February 17, 2015, under Wis. Admin. Code §HA 3.03, to review a decision by the Milwaukee Enrollment Services in regard to FoodShare benefits (FS), a hearing was held on March 10, 2015, at Milwaukee, Wisconsin.

The issue for determination is whether the agency has established an overpayment of FS against the petitioner.

There appeared at that time and place the following persons:

PARTIES IN INTEREST:

Petitioner:

[REDACTED]
[REDACTED]
[REDACTED]

Respondent:

Department of Health Services
1 West Wilson Street, Room 651
Madison, Wisconsin 53703
By: Katherine May, HSPC Sr.
Milwaukee Enrollment Services
1220 W Vliet St, Room 106
Milwaukee, WI 53205

ADMINISTRATIVE LAW JUDGE:

Kelly Cochrane
Division of Hearings and Appeals

FINDINGS OF FACT

1. Petitioner (CARES # [REDACTED]) is a resident of Milwaukee County and has been a recipient of FS.
2. On March 3, 2014 the petitioner reported that she had three children living with her. See Exhibit 4.

3. One of the children in petitioner's care receives SSI payments. He was given his March 2014 payment on March 7, 2014. See Exhibit 3.
4. At least by some time in April 2014, the petitioner also began receiving Kinship payments for the 3 children in her care.
5. In September 2014 the agency received an alert that showed that the petitioner had the Kinship and SSI income in her household.
6. On January 7, 2015 the agency issued a notice of FS overpayment to the petitioner stating that she had been overpaid FS from April 1, 2014-September 2014 in the amount of \$1818 (claim # [REDACTED]).

DISCUSSION

The Department is required to recover all FS overpayments. An overpayment occurs when an FS household receives more FS than it is entitled to receive. 7 C.F.R. §273.18(c). The federal FS regulations provide that the agency shall establish a claim against an FS household that was overpaid, even if the overpayment was caused by agency error. 7 C.F.R. §273.18(b)(3). All adult members of an FS household are liable for an overpayment. 7 C.F.R. §273.18(a)(4); See also FS Handbook, §7.3.1.2, available online at <http://www.emhandbooks.wisconsin.gov/fsh/fsh.htm>.

Here, the agency argues that the petitioner did not report all of her household income, specifically for one of the child's SSI payments and for the Kinship payments for all 3 children, and therefore she received more FS than she was eligible for.

Petitioner did not dispute the income used, but stated that she did report the income in April 2014 online. There is no corroboration of this allegation. Regardless, the agency may still recover an overpayment even if she did report it and the agency failed to budget it. See 7 C.F.R. §273.18(b)(3).

However, the agency must prove that it is entitled to recover the amount it says is due. Agencies are instructed when determining an overpayment to "[o]nly use the income and expenses reported or required to be reported for each month of the adjustment period." FS Handbook §7.3.2.1. What is unclear is when petitioner began receiving the Kinship payment. The only evidence the agency offered was a hearsay statement about a phone call someone made to someone else to show that Kinship began in February. However, petitioner's direct testimony was that Kinship began in April. Without having confirmation of when she truly began receiving the Kinship payments, we do not know for sure when her reporting requirements were triggered and when the overpayment should begin.

Based on the foregoing, I am remanding the matter so that the agency may review all of the information needed to make an accurate overpayment determination. The agency will need to prove when petitioner began receiving Kinship to redetermine the overpayment. Without the evidence on which to base a correct overpayment, the overpayment determination must be rescinded.

As a side-note to both parties, nothing in this decision prevents the county agency from reviewing the matter again and issuing a new overpayment notice and worksheet if it determines that she was in fact overpaid. In fact, federal law requires the agency to pursue recovery of all valid overpayments. Such a determination would be a *new* negative action giving rise to the right to file a *new* appeal. If the agency does find another overpayment, petitioner is reminded that she may make arrangements to repay it via a recoupment of any current FS benefits, as opposed to making an outright payment or having her taxes intercepted.

CONCLUSIONS OF LAW

The agency has not met its burden of proof in establishing a FS overpayment against petitioner for the total time period alleged.

THEREFORE, it is

ORDERED

That the matter is remanded to the county agency with instructions to rescind the FS overissuance Claim # [REDACTED] from April 1, 2014-September 2014 in the amount of \$1818 and to cease all collection or recovery activities based upon the claim, had such collection begun. These actions shall be completed within 10 days of the date of this Decision.

REQUEST FOR A REHEARING

You may request a rehearing if you think this decision is based on a serious mistake in the facts or the law or if you have found new evidence that would change the decision. Your request must be **received within 20 days after the date of this decision**. Late requests cannot be granted.

Send your request for rehearing in writing to the Division of Hearings and Appeals, 5005 University Avenue, Suite 201, Madison, WI 53705-5400 **and** to those identified in this decision as "PARTIES IN INTEREST." Your rehearing request must explain what mistake the Administrative Law Judge made and why it is important or you must describe your new evidence and explain why you did not have it at your first hearing. If your request does not explain these things, it will be denied.

The process for requesting a rehearing may be found at Wis. Stat. § 227.49. A copy of the statutes may be found online or at your local library or courthouse.

APPEAL TO COURT

You may also appeal this decision to Circuit Court in the county where you live. Appeals must be filed with the Court **and** served either personally or by certified mail on the Secretary of the Department of Health Services, 1 West Wilson Street, Room 651, Madison, Wisconsin 53703, **and** on those identified in this decision as "PARTIES IN INTEREST" **no more than 30 days after the date of this decision** or 30 days after a denial of a timely rehearing (if you request one).

The process for Circuit Court Appeals may be found at Wis. Stat. §§ 227.52 and 227.53. A copy of the statutes may be found online or at your local library or courthouse.

Given under my hand at the City of Milwaukee,
Wisconsin, this 2nd day of April, 2015

\sKelly Cochrane
Administrative Law Judge
Division of Hearings and Appeals



State of Wisconsin\DIVISION OF HEARINGS AND APPEALS

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The preceding decision was sent to the following parties on April 2, 2015.

Milwaukee Enrollment Services
Public Assistance Collection Unit
Division of Health Care Access and Accountability